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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 1078

S. B. HEININGER,

Petitioner,

vs.

DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, WILLIAM SYLVESTER WHITE, Director of Registration and Education, and EDGAR T. STEPHENS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

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INDEX.

	PAGE
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statement	3
Reasons for Granting the Writ	6
Conclusion	12
Appendix:	
1. Opinion of Appellate Court	1a
2. Judgment of Appellate Court	8a
3. Order Denying Petition For Leave to Appeal	9a

CITATIONS

Cases:

Bruce v. Department of Registration, 26 Ill. 2d 612, 187 N.E. 2d 711 (1963)	7
Commissioner of Internal Revenue v. Heininger, 320 U.S. 467, 64 S. Ct. 249 (1943)	4, 7
Farley v. Heininger, 105 F. 2d 79 (7th Cir. 1939)	3
Inland Steel Co. v. N.L.R.B., 109 F. 2d 9 (7th Cir., 1940)	11
Menning v. Department of Registration, 14 Ill. 2d 553, 153 N.E. 2d 52 (1958)	7
Michelson v. United States, 335 U.S. 469 (1948)	8
National Labor Relations Board v. Phelps, 135 F. 2d 562 (5th Cir., 1943)	11
U. S. v. Accardo, 298 F. 2d 133 (7th Cir., 1962)	8
Wong Yang Sung v. McGrath, 339 U.S. 33 (1950)	11

Miscellaneous:

59 Northwestern University Law Review 216 (May-June 1964)	10

IN THE

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DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, WILLIAM SYLVESTER WHITE, Director of Registration and Education, and EDGAR T. STEPHENS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

S. B. Heininger prays that a writ of certiorari issue to review the judgment of the Appellate Court of Illinois, First District, entered in the above case on October 21, 1964, petition for leave to appeal to the Supreme Court of Illinois having been denied on January 20, 1965.

THE OPINION BELOW.

The opinion of the Appellate Court of Illinois appears in 53 Ill. App. 2d 182, 202 N.E. 2d 865.

The opinion of the Appellate Court is printed in the Appendix herein, *infra*, page 1a.

JURISDICTION.

The judgment of the Appellate Court of Illinois was entered on October 21, 1964 (Appendix, page 8a). The judgment became final on January 20, 1965, upon the denial of leave to appeal by the Supreme Court of Illinois (Appendix, page 9a).

The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

QUESTIONS PRESENTED.

1. Has due process under the Fourteenth Amendment been accorded to a dentist when his dental license of 35 years is revoked on the basis of matters which occurred from 20 to 25 years before?

2. Can due process under the Fourteenth Amendment possibly be accorded to a dentist when his dental license of 35 years is revoked upon a record containing matters which occurred from 20 to 25 years earlier?

STATEMENT.

The petitioner was licensed to practice dentistry in the State of Illinois in 1924, after receiving his dental education at Northwestern University School of Dentistry (R. 145). From 1924 to 1933 he practiced dentistry in the City of Chicago (R. 146, 154).

From 1933 to 1938, the petitioner operated a world-wide, mail-order dental laboratory business, for which he solicited business through national advertising, and which at its peak did a gross business of $231,000 per year and had 60 employees (R. 235-6, 244, 246). On July 6, 1936, the Federal Trade Commission entered a cease and desist order against the petitioner, enjoining him from continuing certain kinds of advertising (R. 55-9). On February 19, 1938, the Postmaster General of the United States issued a fraud order, preventing the petitioner from using the mails in connection with his dental laboratory business (R. 59-61). The petitioner applied to the Federal District Court for the Northern District of Illinois and obtained an injunction to enjoin enforcement of the fraud order, but the injunction was dissolved by the Court of Appeals for the Seventh Circuit in *Farley* v. *Heininger*, 105 F. 2d 79 (7th Cir., 1939), petition for certiorari denied in *Heininger* v. *Farley*, 308 U.S. 587 (1939).

The petitioner deducted the expenses of the above litigation in his 1937 and 1938 federal income tax returns and the Commissioner of Internal Revenue denied the deductions. The Board of Tax Appeals affirmed the Commissioner in 47 B.T.A. 95, but the Court of Appeals for the

Seventh Circuit reversed the Board and upheld the deductions. The Supreme Court of the United States affirmed the Court of Appeals and held that the petitioner's deductions of his litigation expenses were proper as business expenses. In *Commissioner of Internal Revenue* v. *Heininger*, 320 U.S. 467, 64 S. Ct. 249 (1943), which has since become the leading case in the field of proper business expenses, the Supreme Court of the United States was required to *pass upon* the nature of the petitioner's mail order business from 1933 to 1938. This Court held at page 472:

> "*So far as appears from the record respondent did not believe, nor under our system of jurisprudence was he bound to believe, that a fraud order destroying his business was justified by the facts or by the law. Therefore he did not voluntarily abandon the business but defended it by all available legal means.*" (Emphasis supplied).

During the period of the petitioner's mail-order business, proceedings were instituted against him by the Department of Registration and Education, but when he abandoned the mail-order business in 1938, the petitioner's license was restored in June, 1938 (R. 138-42, 327, 329). The petitioner did not practice dentistry from 1938 to 1948 (R. 157-8) but from 1948 to the present time he has continued to practice dentistry in the City of Chicago.

A complaint was filed on March 28, 1960, by Edgar T. Stephens, relator, before the Department of Registration and Education, against the petitioner, requesting the Department to investigate the actions of the petitioner to determine whether his certificate of registration as a licensed dentist should be suspended or revoked. Para-

graphs 6 through 23 of the complaint (R. 45-61) as well as the two exhibits attached to the complaint refer solely to the petitioner's advertising appearing between 1933 and 1938 and to his mail-order dental laboratory business conducted between the years 1933 and 1938.

Hearings were held on July 18, and on November 29 and 30, 1960. The only witnesses were the relator and the petitioner. The relator introduced 39 exhibits, 29 of which consisted of advertising appearing between 1933 and 1938 and other documents relating solely to the petitioner's mail-order business between 1933 and 1938 (Rel. Exs. 9 through 37; R. 362-444). Most of the testimony elicited by the relator from the petitioner on adverse examination related to the period between 1933 and 1938 (R. 235-270).

The petitioner's attorney prior to the commencement of the hearings promptly raised the issues of (1) the staleness of the allegations in the complaint and (2) res adjudicata based on the restoration of the petitioner's license in June, 1938 (R. 130, 327). During the course of the hearings, the petitioner's attorney objected whenever the relator's attorney attempted to question the petitioner about matters occuring prior to June, 1938 (R. 239-41). The petitioner's attorney objected to the introduction of Exhibits 9 through 37, all of which related to the petitioner's activity prior to June, 1938 (R. 211, 296). The Board of Dental Examiners overruled the objections of petitioner's attorney to the introduction of matters concerning the period from 1931 to 1938 on the ground that petitioners' constitutional rights were violated (R. 302, 329). The Board eventually overruled all of the petitioner's objections to questions relating to matters occurring prior

to June, 1938, whereupon all of the testimony and exhibits relating to the period of 1933 and 1938 were made a part of the record in this 1960 proceeding. The petitioner again objected to any reference to 1933-1938 matters in his petition for rehearing addressed to the Department of Registration and Education (R. 341-2), which petition was denied (R. 349).

The constitutional propriety of proceeding upon a record with the 1933-1938 matters constituting its bulk was raised by the petitioner in the Appellate Court of Illinois and again when he sought leave to appeal to the Supreme Court of Illinois.

REASONS FOR GRANTING THE WRIT.

The enormity of the prejudice against the petitioner which contaminates this entire record almost defies description: Of the 24 paragraphs in the complaint, 18 paragraphs refer exclusively to matters occurring in 1938 or prior thereto and these matters are spread over 16 pages of the Record (R. 45-61); of the relators 39 exhibits, 29 consist of advertising and other documents appearing during the period 1933-1938 (R. 362-444); and most of the testimony elicited from the petitioner on adverse examination referred to the period prior to and including 1938. The 29 ancient exhibits were so old and ragged that the relator's attorney and the legal advisor to the Board of Dental Examiners both agreed that photostatic copies would be substituted in the record only with the stipulation that upon the request of petitioner's attorney, the original exhibits would be produced in the

Appellate Court during oral argument so that the Court could observe their condition of age (R. 323).

The petitioner's mail-order dental business of 1933-1938, if conducted at the present time, would be unlawful. Until that business was terminated in 1938, it was not as clear that it was improper as it may be in retrospect 25 or 30 years later. In fact the Supreme Court of the United States specifically passed upon the petitioner's conduct during that period and expressly found that the petitioner "did not believe, nor under our system of jurisprudence was he bound to believe, that a fraud order destroying his business was justified by the facts or by the law." *Commissioner of Internal Revenue* v. *Heininger*, 320 U.S. 467 (1943) at page 472.

But despite the legality or illegality of the petitioner's conduct in 1933-1938, the Department of Registration and Education, the same administrative agency which heard the present proceedings, had considered the petitioner's conduct during 1933-1938 and, when the petitioner terminated his mail-order business, restored his license in June, 1938 (R. 138-42, 327, 329).

The Department of Registration and Education was presented with this case in 1960, when it had been discovered that the petitioner's dental office was at the same address where there was also located a dental laboratory, a fact which the Supreme Court of Illinois has, in the last two dental license cases presented to it, held to be entirely proper and lawful. *Menning* v. *Department of Registration*, 14 Ill. 2d 553, 153 N.E. 2d 52 (1958); *Bruce* v. *Department of Registration*, 26 Ill. 2d 612, 187 N.E. 2d 711 (1963). The only reason which can possibly explain the Department's result in the present case is that the peti-

tioner's license was revoked because of his activities in 1933-1938. Such a result constitutes a complete denial of due process of law. Section 2 of Article II of the Illinois Constitution and Amendment XIV of the Constitution of the United States provide that no person shall be deprived of life, liberty or property without due process of law.

The mere existence of the avalanche of prejudicial and inflammatory material would in itself vitiate these proceedings. In *Michelson* v. *United States,* 335 U.S. 469 (1948), the United States Supreme Court said at pages 475-6:

> "Courts that follow the common-law tradition almost unanimously have come to disallow resort by the prosecution of any kind of evidence of a defendant's evil character to establish a probability of his guilt."

A hearing becomes tainted once the prejudicial matter is introduced even if the trier of the case professes not to be influenced by it. In *United States* v. *Accardo,* 298 F. 2d 133 (7th Cir., 1962), the defendant had been convicted for income tax violations for the years 1956, 1957 and 1958. In the course of the trial his income tax returns for 1940-1955 were admitted in evidence. The trial judge in his instructions to the jury purported to limit the effect of the earlier returns to show "motive, intent or wilful conduct." The Court of Appeals said in its opinion (298 F. 2d 133):

> "There was prejudicial error also in the trial court's admission, over objection, of evidence of defendant's income tax returns for the years 1940 through 1955. The court admitted the evidence to show 'motive, intent, or willful conduct.' • • •
>
> "The income tax returns were introduced, and several witnesses testified to the preparation of the re-

turns and to conversations with defendant about the sources of his income for those years. * * *

"The impact of this testimony on the trial judge indicates the probable prejudicial impact the testimony had on the jury.

* * * * *

"We conclude that the highly prejudicial evidence was not relevant and was inadmissible, that the court had no discretion to admit it, and that the careful instruction with respect to the evidence could not cure the error because the evidence should not have been admitted."

In a concurring opinion, Judge Duffy said:

"* * * The manner in which the 1940-1955 income tax returns were handled, in my opinion, was prejudicial to the right of the defendant to have a fair trial on the charges which were then before the court."

In the present case, not only were the 1933-1938 occurrences not "then before the court," but the Department of Registration and Education had actually passed upon these very charges and had restored the petitioner's license in June, 1938 (R. 138-42, 327, 329). In addition in the present case, the trier of the facts (the Board of Dental Examiners) did not purport to be unaffected by the prejudicial matter, as in most other cases, but *actually rendered its Report on the basis of the prejudicial matter*: Of the 25 findings in the Report of the Board, 11 findings are based on 1933-1938 matters (Nos. 3, 4, 8, 9, 10, 11, 12, 13, 14, 15 and 16; R. 330-3) and include lengthy recitals concerning the mail-order business, the Federal Trade Commission order of 1936 and the Post Office order of 1938. The 20 conclusions of the Board are even more astonishing and include the following (the notation "no evidence" hereafter meaning "no evidence unless the 1933-1938 matters are considered evidence"):

Conclusion No.	*Charge*	*Basis*
3	Misrepresentations	No evidence
5	False representations	No evidence
7	Holding out as specialist	No evidence
11	Fraudulent statements	No evidence
13	Publication of reports of cases	No evidence
14	False Advertisement	No evidence
15	Advertisement of free dental services	No evidence
16	Advertisement of prices for dental services	No evidence
17	Federal Trade Commission order	No evidence
18	Post office order	No evidence
19	(Based in part upon 1936 and 1938 matters)	No evidence

Conclusion No. 20 criticizes the petitioner for refusing to answer questions about his 1933-1938 mail-order practice until required to do so by court order. In view of the facts, the plaintiff was amply justified in such refusals.

Thus it is clear that the Board and hence the Department was not only exposed to prejudicial matter but acted upon it.

In a comprehensive comment in 59 Northwestern University Law Review 216 (May-June, 1964) entitled "Prejudice and the Administrative Process," the following conclusion appears at pages 242-3:

> "Certainly one of the most basic of procedural safeguards is the guarantee of a fair hearing and record determination when factual issues are in dispute in an adjudicatory proceeding."

In support of this conclusion the comment cites *Wong Yang Sung* v. *McGrath,* 339 U.S. 33 (1950), where the Supreme Court stated at page 50:

> "When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets at least currently prevailing standards of impartiality."

See also, *Inland Steel Co.* v. *N.L.R.B.,* 109 F. 2d 9 (7th Cir., 1940) at page 20. A hearing "must mean a trial by a tribunal free from bias and prejudice * * *"

The incredibly unfair and biased hearing contaminated the entire proceedings. In *National Labor Relations Board* v. *Phelps,* 136 F. 2d 562 (5th Cir., 1943), the Court said at pages 563-4:

> "* * * a fair trial by an unbiased and non-partisan trier of the facts is of the essence of the adjudicatory process as well when the judging is done in an administrative proceeding by an administrative functionary as when it is done in a court by a judge. Indeed, if there is any difference, the rigidity of the requirement that the trier be impartial and unconcerned in the result applies more strictly to an administrative adjudication where many of the safeguards which have been thrown around court proceedings have, in the interest of expedition and a supposed administrative efficiency been relaxed. Nor will the fact that an examination of the record shows that there was evidence which would support the judgment, at all save a trial from the charge of unfairness, for when the fault of bias and prejudice in a judge first rears its ugly head, its effect remains throughout the whole proceeding. Once partiality appears, and particularly when, though challenged, it is unrelieved against, it taints and vitiates all of the proceedings, and no judgment based upon them may stand."

On the ground of prejudicial trier of facts and the unfair hearing the entire judgment is tainted and must be reversed and set aside.

CONCLUSION.

It is impossible to find a case in any field, much less among cases involving revocation of professional licenses, where more prejudicial, damaging and inflammatory matter was unlawfully and unconstitutionally introduced and relied upon.

There is no possible way to erase the enormity of the prejudice from this record. The Appellate Court states that "it is not necessary to consider the alleged violations * * * which date back to 1926-1939." It is virtually impossible for the human mind—including the trained minds of judicial officers—to be exposed to an avalanche of prejudicial matter and not to accept such matters as undisputed proof equal in every respect to evidence of alleged current violations. The record herein has been tainted and cannot be purged.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

1. OPINION OF THE APPELLATE COURT

MR. JUSTICE DRUCKER Delivered the Opinion of the Court:

This is an appeal from a decision affirming an order revoking the license of plaintiff to practice dentistry in Illinois.

A complaint, filed with the Department of Registration and Education on March 28, 1960, by Edgar T. Stephens, Relator, charged eighteen violations of the Illinois Dental Practice Act (Ill. Rev. Stat., 1959, ch. 91, § § 60a-72). Plaintiff did not file an answer.

Hearings were held by the Board of Dental Examiners in 1960 with two witnesses testifying, Relator Stephens and plaintiff. The Board of Dental Examiners in its Report of Findings and Recommendations on September 19, 1961, found plaintiff guilty of unprofessional conduct [1] and the Department of Registration and Education adopted that report. On February 5, 1962, plaintiff's license was revoked. Subsequently plaintiff's complaint for administrative review was filed and on November 27, 1963, the Circuit Court affirmed the order of revocation.

The March 28, 1960, complaint focuses on three areas of alleged violations. Chronologically, the first series of

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[1] The report found violations of paragraphs 6, 7, 8, 9, 10, 16, 17, 18 and 18b of the Illinois Dental Practice Act (Ill. Rev. Stat., 1959, ch. 91, § § 59a *et seq.*

violations pertains to 1926-1939.[2] These violations were based on extensive national advertising whereby Heininger solicited dental patronage, particularly for the manufacture, repair, relining and reproduction of full and partial dentures; that in said advertising Heininger held himself out to the public as a "Specialist in Postal Prosthodontia" although he was never licensed as such. The second collection of violations relates to plaintiff's professional association with Clark Dental Laboratory. The third division of the complaint relates to plaintiff's operation of the Ashland-Belmont Dental Laboratory at 954 West Belmont Avenue, Chicago.

Plaintiff was an adverse witness at a hearing held on July 18, 1960, and on subsequent dates. In his testimony he disclosed that:

> I am engaged in the practice of dentistry. My office is located at 954 Belmont. I have been there approximately a year and two, three months. I am engaged in the general practice of dentistry. I have no other office in Chicago. I am open every day except Sunday from 9:00 to about 6:00, 7:00.

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[2] A brief resume of plaintiff's career reveals that he was licensed to practice dentistry in Illinois in 1924, after receiving his dental education at the Northwestern University School of Dentistry; that from 1924 to 1933 he practiced dentistry in Chicago; that he subsequently operated a worldwide, mail-order dental laboratory business, for which he solicited through national advertising and which at its peak did a gross business of $231,000 and had 60 employees; that the Federal Trade Commission entered a cease and desist order enjoining him from continuing certain advertising practices. Plaintiff was also involved in proceedings with the Postmaster General of the United States and the Internal Revenue Service.

(Appellate Court Opinion)

Heininger detailed the operation of a dental laboratory at the Belmont address:

> I started my work at the 954 West Belmont address about 14 or 15 months ago. I have conducted an office there ever since. I am there now. My own dental laboratory is located at that address also. I consider the whole thing a dental office. Every dental office has a laboratory. . . . There is a room for a laboratory bench work, so there would be three rooms. I do not have any employees there. I do the dental work and any laboratory work. I own this business myself.

Plaintiff elaborated on work which he performed at the 954 Belmont laboratory:

> I have no employees in my present place of practice at 954 West Belmont. I do laboratory work for one or two other dentists. One is Dr. Nelson. He brings it in, I do the work, and then he picks it up. . . . I don't recall the name of the other dentist. I did work for him seven or eight months ago.

Thirty-nine exhibits were introduced at the hearing. Four are pertinent to violations relating to the Ashland Belmont Laboratory. They include: (1) a business card, (2) two photographs of signs on the building facade and (3) an advertisement in the Classified Telephone Directory. The format of the business card was: "LI 9-4585/Ashland-Belmont Dental Laboratory—Hours: Monday-Friday 9 A.M.-7 P.M. Saturday 9 A.M.-4 P.M./954 West Belmont Ave. Chicago, Ill." Plaintiff admitted that the card ". . . is a business card used in my practice of dentistry at 954 West Belmont, where I am now."

One photograph was of the front window of the laboratory. In large dark block letters against a light background was inscribed: "Ashland Belmont Dental Laboratory." Be-

neath the inscription in small dark letters was: "Dr. S. Heininger, Dentist." Another picture showed the door of the 954 Belmont building. Affixed to the door was a prominent sign: "Dental Laboratory—Hours Daily—Mon. thru Fri. 9 am to 7 pm—Sat. 9 am to 4 pm—S. Heininger DDS —Gr. 7-3751." In the 1960 Chicago Red Book Classified Telephone Directory, at page 570, under the general listing for "Dental Laboratories" was a two-inch, one-column advertisement for Ashland Belmont Laboratories. The display: "Ashland Belmont Dental Laboratories—North —Lakeview Shopping Area—Manufacturing & Repairing of Dental Plates—Serving the Dental Profession for 19 years—(At the Belmont "L" Station)—954 W. Belmont— Gr 7-3751."

Among the issues presented are the provisions of the statute which relate to: (1) practicing dentistry under a name other than appears on the license issued by the Department of Education and Registration and (2) advertising via media which calls attention of the public to any person engaged in the practice of dentistry.

The Illinois Dental Practice Act (Ill. Rev. Stat., 1959, ch. 91, § 72) provides that:

> It shall be unlawful for any person or persons to practice dentistry under the name of a corporation, company, association or trade name; or under any name except his or her own proper name, which shall be the name used in his or her license as issued by the Department of Registration and Education.

Plaintiff's license was issued to him in 1924. Plaintiff admitted that he was "engaged in the practice of dentistry," that his office "is located at 954 Belmont." We are confronted with four exhibits in which plaintiff advertised

to the public in a manner indicating that he was practicing under a name that was not his own. The sign on the window at the 954 Belmont premises featured "Ashland Belmont Dental Laboratory." The business announcement in the 1960 Red Book Classified Telephone Directory *only* referred to the Ashland Belmont Dental Laboratory. No mention was made in the "Dental Laboratory" classification of Dr. Heininger, the individual licensed to practice by the state of Illinois and the admitted operator of the laboratory.

Plaintiff testified that when he leased the Ashland Belmont Laboratory premises they were vacant and that he did not purchase them from anyone; that he had known a Howard Osburn for five or six years and that Osburn "had the Ashland-Belmort Dental Laboratory at that location for some time before I went in there." Since plaintiff was the sole owner and operator, any publicizing was his direct responsibility. Plaintiff revealed that his business card, which mentioned only the dental laboratory, "is a business card used in my practice of dentistry at 954 West Belmont, where I am now." We are compelled to conclude that plaintiff was not practicing dentistry under his own name. This is a sufficient predicate for revocation. *Wallace J. Parker* v. *Department of Registration*, 5 Ill. 2d 288, 295.

The Dental Practice Act provides that a license may be revoked for certain other enumerated offenses (Ill. Rev. Stat., 1959, ch. 91, § 62, par. 17). One offense pertains to advertising:

> Except as otherwise provided in Section 18b(•), advertising or soliciting by himself or through another by means of hand bills, posters, circulars, stereopticon slides, motion pictures, radio, newspapers or in any other manner for professional business.

(•) Also referred to as Sec. 72b.

(Appellate Court Opinion)

Section 72b states that it shall be unlawful for any person, firm or corporation:

> . . . to exhibit or use specimens of dental work, posters or any other media calling attention of the public to any person engaged in the practice of dentistry.

The statute further provides that:

> Any person committing an offense against any of the provisions of this section, shall upon conviction, be subjected to such penalties as are provided in this Act, except any person licensed under this Act may list his name, title, specialty, address and telephone number in professional and telephone directories; or announce by way of a professional card containing only the name, title, degree, office location, office hours, phone number, residence address and phone number and specialty, if any, if desired, but such card shall not be greater in size than 3½ inches by 2 inches; or list his name, title, specialty, address and telephone number in public print when limited to the number of lines necessary to state such information; . . . or display the name of the licensee, on the premises where engaged in the profession, upon the windows thereof and by a door plate or name or office directory when the information is limited to that of the professional card . . .

Plaintiff violated paragraph 17. The large sign: "Ashland Belmont Dental Laboratory—Dr. S. Heininger, Dentist" and the display advertisement in the 1960 Red Book Classified Telephone Directory were used to acquire dental business because plaintiff was the laboratory and any business which came to him could only be handled by him as a practicing dentist. The violation is made all the more apparent by (1) the utilization of the laboratory name

during the fourteen months during which plaintiff occupied the premises and (2) the business card which featured the laboratory name, not the name of the plaintiff.

The testimony of the plaintiff and the exhibits pertaining to the dental laboratory at 954 West Belmont clearly indicate that plaintiff committed two violations of the Dental Practice Act, i.e., practicing dentistry under a name other than appears on his license and unauthorized advertising via media which calls attention of the public to any person engaged in the practice of dentistry.

The revocation of plaintiff's license to practice dentistry in Illinois is affirmed. For this reason it is not necessary to consider the alleged violations at the Clark Street office or those which date back to 1926-1939.

Affirmed.

ENGLISH, P. J. and MCCORMICK, J., concur.

2. JUDGMENT OF APPELLATE COURT

S. B. Heininger, Appellant, vs. Department of Registration and Education of the State of Illinois, William Sylvester White, Director of The Department of Registration and Education of the State of Illinois, and Edgar T. Stephens, Appellees.	Appeal from the Circuit Court of Cook County.

No. 49500

AFFIRMING ORDER.

The order of the Circuit Court of Cook County is Affirmed and Edgar T. Stephens, Certain Appellee, recover costs from Appellant.

Execution may issue.

3. THE ORDER OF JANUARY 20, 1965 OF THE SUPREME COURT OF ILLINOIS DENYING LEAVE TO APPEAL

United States of America

State of Illinois
Supreme Court—ss.

At A Term Of The Supreme Court, begun and held in Springfield on Monday, the eleventh day of January in the year of our Lord, one thousand nine hundred and sixty-five, within and for the State of Illinois.

Present: Ray I. Klingbiel, Chief Justice.
Justice Joseph E. Daily Justice Walter V. Schaefer
Justice Harry B. Hershey Justice Byron O. House
Justice Roy J. Solfisburg, Jr. Justice Robert C. Underwood
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searcy, Clerk

Be It Remembered, that, to-wit: on the 20th day of January, 1965, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

S. B. Heininger,
Petitioner.

No. 39076 vs.

Department of Registration and Education of the State of Illinois, William Sylvester White, Director of Registration and Education, and Edgar T. Stephens.
Respondents.

Petition for Leave to Appeal from Appellate Court, First District.
62 C 2644
49500

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the

(Order of Supreme Court Denying Leave to Appeal)

record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondents recover of and from the said Petitioners costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and Keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 25th day of January, 1965.

/s/ Mrs. Earle Benjamin Searcy,
Clerk, Supreme Court of the
(Seal) State of Illinois.

INDEX.

PAGE

Statement 1

Argument 11

Conclusion 18

CITATIONS

Cases:

In Re Anderson, 370 Ill. 515, 520 17

Bruce v. Department of Registration, 26 Ill. 2d 612, 187 N. E. 2d 711 (1963) 15

Commissioner of Internal Revenue v. Heininger, 320 U. S. 467, 64 S. Ct. 249 (1943) 12, 15

Farley v. Heininger, 105 F. 2d 79 (1939); certiorari denied, 308 U. S. 587 (1939) 4

Menning v. Department of Registration, 14 Ill. 2d 553, 153 N. E. 2d 52 (1958) 15

People ex rel. Chicago Dental Society v. A A A Dental Laboratories et al., 8 Ill. 2d 330, 134 N. E. 2d 285; review denied, 352 U. S. 863 (1956) 6, 7

State of Wisconsin v. Josefsberg, 275 Wis. 142, 81 N. W. 2d 735, 63 A L R 2d 1071 (1957) 17

Statutes:

Cahill Illinois Revised Statutes, 1927, Chapter 91, Paragraph 78 14

Cahill Illinois Revised Statutes, 1933, Chapter 91, Paragraph 88 (2) 14

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1964.

NO. 1078

S. B. HEININGER,

Petitioner,

vs.

DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, WILLIAM SYLVESTER WHITE, Director of Registration and Education, and EDGAR T. STEPHENS,

Respondents.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

STATEMENT

Because Petitioner's Statement is deemed to be wholly inadequate and incomplete, the following Statement is submitted for consideration by the court.

Following Petitioner's licensure to practice dentistry in Illinois in 1924 (R. 145), he occupied office space at various addresses in Chicago, Illinois until 1938 (R. 146-154).

From 1938 to approximately 1948, Petitioner was out of the practice of dentistry and lived on a farm in Wisconsin (R. 157-8). Thereafter, Petitioner returned to Chicago and resumed the practice of dentistry at various places (R. 150-1).

In about 1926, Petitioner started a dental laboratory business at 2800 West Belmont Avenue, Chicago, Illinois, and was there until about 1931 (R. 236). He employed other technicians at that address and it was there that he first engaged in the mail order denture business (R. 237).

Petitioner's procedure did not include taking impressions of patients at the laboratory location (R. 249). Instead, he mailed impression trays, impression material, and instructions to his patients and they took their own impressions and mailed them back to Petitioner (R. 248). The dentures were then made in the laboratory and mailed to the patients, who tried the dentures in their own mouths to determine if they fit (R. 248). If the patients decided that the dentures did not fit properly, they were invited to mail them back to Petitioner and tell him about it, and he would make adjustments (R. 248).

Petitioner's mail order denture business grew until it was worldwide (R. 243). The business was obtained through the medium of national advertising, in newspapers and magazines (R. 243). In about 1931 Petitioner moved his business to 440 West Huron Street, Chicago, where it continued to grow (R. 243). The number of his employees grew from 10 to 60 (R. 245-6). No other dentists were in this group (R. 246). Petitioner's business reached a gross in one year of $231,000.00 (R. 244). Petitioner testified his advertising budget never exceeded $3,000 per month (R. 245). However, in the case cited at page 4 of the printed Petition herein the court refers to gross income from Pe-

titioner's business in 1937 and 1938 as having been $287,000.00 and $150,000.00 respectively.

In the hearings before the State Board of Dental Examiners, when Petitioner was first asked whether he had been in the mail order denture business during the period 1926 to 1938, he refused to answer on the ground that to do so might tend to incriminate him (R. 162). He made a similar refusal, for the same reason, when he was asked if he withdrew from the mail order denture business and went to the farm in Wisconsin after the United States postal authorities issued a fraud order against him (R. 162-2).

When Petitioner was shown Relator's Exhibits 12 to 24, inclusive, comprising advertisements from various publications, such as Grit Newspaper, Rural Progress Magazine, Illustrated Mechanics Magazine, The Household Magazine, and others, he admitted that this advertising copy, much of which included Petitioner's own photograph and facsimile signature, could be his (R. 250-8). This advertising copy included a 60-day trial offer, with a guarantee of satisfaction or money would be refunded, also a claim that the customer would save $10.00 to $50.00 and more, an offer of free impression material and directions, a statement that Petitioner's methods insured satisfaction, testimonial statements supposedly made by satisfied customers, pictorial representations of upper and lower dentures, and a photograph of Petitioner (Rel. Ex. 13; R. 417, 296).

Another of Petitioner's advertisements included the featured words "Lowest Prices", and also the statements: "You Can Look Younger At Once", and "Well-fitting and Guaranteed Unbreakable" (Rel. Ex. 16; R. 420, 296).

After a customer made inquiry, Petitioner sent him a price list such as Relator's Exhibit 32, showing prices ranging from $6.85 to $49.00 per denture and the trade-

names "Fit-well" and "Porcalite" (Rel. Ex. 32; R. 439, 296). Petitioner admitted he used the name "Fit-well" in connection with plates he sold and that "Porcalite" could be a name he used (R. 264).

On January 10, 1936, a complaint was filed against Petitioner before the Federal Trade Commission regarding representations Petitioner had made in connection with his mail order denture business, and under date of July 6, 1936, pursuant to a stipulation of facts entered into by Petitioner and the Commission, a cease and desist order was issued against Petitioner using certain statements in his advertising (Rel. Ex. 9; R. 55-59, 211).

On February 19, 1938, the United States Post Office Department issued a fraud order against Petitioner to stop further use of the mails in the conduct of Petitioner's mail order denture business (Rel. Ex. 10; R. 374-414, 224).

Petitioner then applied to the United States District Court for the District of Columbia (not the Federal District Court for the Northern District of Illinois, as indicated at page 3 of the Petition) and on June 6, 1938 obtained an injunction against enforcement of the fraud order. The Postmaster General appealed from the injunction order and the United States Court of Appeals for the District of Columbia (not the Court of Appeals for the Seventh Circuit, as stated at page 3 of the Petition) reversed the decision of the trial court (*Farley* v. *Heininger*, 105 F. 2d 79 (1939); *certiorari* denied, 308 U. S. 587 (1939)). Pursuant to the mandate of the United States Court of Appeals for the District of Columbia, an order was entered October 27, 1939 by the United States District Court for the District of Columbia dissolving the injunction (Rel. Ex. 11; R. 415, 224).

The gist of the charges made against Petitioner in the *Post Office Department* case was that he made fraudulent representations in his advertising about his special system, which he could not fulfill, that his procedure for having customers take their own impressions omitted several processes absolutely vital to securing properly fitting and functioning dentures, that a large part of Petitioner's letters of commendation were obtained through promises by Petitioner of a reward in the form of gifts, that in printing testimonial letters Petitioner deleted important statements therein or altered them, and that Petitioner's representations about the personal supervision of the manufacture or repair of dentures sold by him, as well as other parts of his advertising, were false and fraudulent (R. 59-61).

After the Post Office Department fraud order finally became effective by virtue of dissolution of the above mentioned injunction on October 27, 1939, Petitioner lived on a farm in Wisconsin for nine or ten years, after which he retured to Chicago (R. 157-8).

From 1948 to about 1957, Petitioner practiced dentistry at various locations in Chicago, although his testimony covering this period is confusing and inconsistent (R. 149-156, 159). From 1957 to 1959, approximately, Petitioner was associated with an advertising dental laboratory operated by one Charlotte Heins, under the name "Clark Dental Laboratory" at 2656 North Clark Street, Chicago, Illinois (R. 165-173). Petitioner rented office space and equipment from this laboratory for $30.00 per month under a verbal, month to month lease (R. 172). This included a reception room, an operating room, electricity, water, and equipment in the operating room, including the dental chair (R. 168, 171). Petitioner owned some of the tools and instruments, including a majority of the impression trays (R. 169). Gen-

erally, Petitioner purchased the materials he used, although some were furnished by the laboratory (R. 171). Petitioner was at the Clark Dental Laboratory premises on the average of three days per week (R. 170).

While Petitioner was renting space from Charlotte Heins at Clark Dental Laboratory, the laboratory was carrying display advertising in the Chicago Red Book Classified Telephone Directory, including the words "Specializing In Emergency Repairing, Duplicating and Making of Dental Plates" (Rel. Ex. 4; R. 357, 198); (Rel. Ex. 7; R. 360, 199). Such display advertising was held to be a violation of Section 5a of the Illinois Dental Practice Act in the case of *People ex rel. Chicago Dental Society* v. *AAA Dental Laboratories et al.*, 8 Ill. 2d 330, 134 N. E. 2d 285; review denied, 352 U. S. 863 (1956), in which case said Charlotte Heins, d/b/a Clark Dental Laboratory, was a party defendant and was found guilty of practicing dentistry without a license and was enjoined from further violations.

At the same time, Petitioner's name was listed in the Chicago Red Book Classified Telephone Directory under the classification "Dentists", showing in the 1959 Directory his addresses as being 3623 West Armitage Avenue and 2656 North Clark Street, and in the 1960 Directory showing his address as being only at 2656 North Clark Street, the address of Clark Dental Laboratory, which listings Petitioner claimed were in error (Rel. Ex. 5; R. 350, 198) (Rel. Ex. 8; R. 361, 199).

Petitioner testified that at the time of the hearing before the Illinois State Board of Dental Examiners on July 18, 1960 he was practicing dentistry at 954 Belmont Avenue, Chicago, Illinois and had been at that address approximately 14 or 15 months (R. 174). He also had operated a dental laboratory at that address (R. 174). Howard Os-

burn, known to Petitioner for 5 or 6 years, had previously operated a dental laboratory at the same location under the name "Ashland Belmont Dental Laboratory" (R. 175). Petitioner continued to use this laboratory name after he rented the premises (Rel. Ex. 1, 2, 3; R. 356, 186). Howard Osburn was also a defendant in the above mentioned case of *People ex rel. Chicago Dental Society* v. *AAA Dental Laboratories et al.* and was also enjoined from further violations of the Illinois Dental Practice Act, including Section 5a relating to advertising.

In the 1960 issue of the Chicago Red Book Classified Telephone Directory, a display advertisement appeared at page 570 under the name of Ashland Belmont Dental Laboratory (Rel. Ex. 6; R. 570, 204).

On March 28, 1960, Edgar T. Stephens, Relator before the State Board of Dental Examiners, filed a complaint with the Department of Registration and Education which included charges covering a substantial portion of Petitioner's professional career, 1926 to 1939, and 1959-60 (R. 43-65). Paragraphs 2 to 5, inclusive, of the complaint covered Petitioner's professional association with Clark Dental Laboratory, his operation of Ashland Belmont Dental Laboratory, and the Classified Telephone Directory display advertising carried under the names of both laboratories (R. 43-45). Paragraphs 6 to 23, inclusive, of the complaint covered development of Petitioner's mail order denture business, his advertising activities, his representations and promises to the public, his difficulties with the Federal Government, the Federal Trade Commission stipulation and cease and desist order, and the Post Office Department fraud order which terminated Petitioner's use of the mail for his denture business (R. 45-61).

Hearings were held July 18, November 29, and November 30, 1960, with Relator, Edgar T. Stephens, and Petitioner

testifying (R. 144-324). Relator's Exhibits 1, 2 and 3 comprised photographs by Mr. Stephens taken October 22, 1959 of Petitioner's Ashland Belmont Dental Laboratory premises (Rel. Ex. 1, 2, 3; R. 356, 186). Relator's Exhibits 4-8, inclusive, consisted of display advertising in the 1959 and 1960 Chicago Red Book Classified Telephone Directories for Clark Dental Laboratory and Ashland Belmont Dental Laboratory (Rel. Ex. 4; R. 357, 198); (Rel. Ex. 5; R. 350, 198); (Rel. Ex. 6; R. 570, 204); (Rel. Ex. 7; R. 360, 199); (Rel. Ex. 8; R. 361, 199).

The remainder of Relator's Exhibits comprised advertising and mailing literature used by Petitioner in his mail order denture business, plus certified copies of the Federal Trade Commission cease and desist order and the Post Office Department fraud order (R. 250-300; 362-446).

Petitioner, on adverse examination, testified as to the chronology of his dental practice in Chicago for the period 1924 to 1960, as follows: one year at 625 Diversey, about five years at Elston and Belmont, six months at Kedzie and Roosevelt Road, six or seven months at Elmwood Park, five years at 3623 Armitage Avenue, and stated that this brought him up to 1958 or 1959, with a few years vacation beginning about 1940 (R. 146-151).

Petitioner also testified that for the period 1931 to 1948 he did not have an office where he was practicing dentistry and that he was engaged in farming in Wisconsin (R. 157-8). However, he then testified that he lived in Chicago from 1931 to 1948 and was practicing dentistry (R. 158).

When Petitioner was asked whether he was engaged in the mail order denture business from 1926 to 1938, he refused to answer on the ground that his answer might tend to

incriminate him (R. 161-2). He made a similar refusal when asked generally if he had ever been in the mail order denture business in Chicago (R. 163-4).

Thereafter, pursuant to court order, Petitioner testified that from 1933 to 1938 he did have a dental laboratory at 440 West Huron Street, Chicago, and that he started the laboratory business between 1926 and 1931 at 2601 West Belmont, where he also had a dental office (R. 236).

Petitioner testified that he used his name in connection with the laboratory business and that through national advertising in newspapers and magazines his business became world-wide and he grossed $231,000.00 or more per year at its peak, with an advertising budget not to exceed $3,000.00 per month (R. 243-5). In the Post Office fraud hearing it was disclosed that Petitioner expended $60,000.00 for advertising in 1936 (Rel. Ex. 10; R. 374-414).

Relator, Edgar T. Stephens, testified that he took photographs of Petitioner's Ashland Belmont Laboratory on October 22, 1959, which are Relator's Exhibits 1-3 (Rel. Ex. 1-3; R. 356, 186). On cross-examination he testified that Relator's Exhibits 12-37 were found in the files of the Illinois Department of Registration and Education in late 1959 or early 1960; that he was at that time an investigator for the Department, serving without compensation; and that he undertook the investigation of Petitioner at the request of the then Director of the Department, Vera M. Binks (R. 309).

The State Board of Dental Examiners filed its Report of Findings and Recommendations on September 19, 1961, in which Petitioner was found guilty of unprofessional conduct both as to operation of his dental laboratory business during the earlier years and also as to his professional association with Clark Dental Laboratory and the display ad-

vertising by that laboratory and Ashland Belmont Dental Laboratory in the later years, and also that Petitioner practiced dentistry under a name other than his own, and recommended that Petitioner's license be revoked (R. 326-339). Petitioner filed a motion for rehearing October 11, 1961 (R. 341-3), which was argued November 10, 1961 and denied February 5, 1962 (R. 349). The Board's recommendation was accepted by the Department and the revocation order was issued February 5, 1962 (R. 351).

Petitioner's complaint for administrative review was filed in the Circuit Court of Cook County, Illinois on February 16, 1962 (R. 2-6) and on November 27, 1963 that court entered an order affirming the order of revocation (R. 448-9).

ARGUMENT.

Two questions are presented by Petitioner (Petition, p. 2). The first question is based upon a false premise. It *assumes* that Petitioner's dental license was revoked "on the basis of matters which occurred from 20 to 25 years before". Such assumption is not borne out by the record in this case.

We refer to the opinion of the Illinois Appellate Court, where it is pointed out that the complaint of March 28, 1960 focuses on three areas of alleged violations: (1) operation of Petitioner's nationally advertised mail order denture business from 1926 to 1939; (2) Petitioner's professional association with Clark Dental Laboratory in Chicago, Illinois from 1957 to 1959; and (3) Petitioner's operation of the Ashland Belmont Dental Laboratory, in Chicago, Illinois, in 1959 and 1960 (Pet., pp. 1a, 2a).

The State Board of Dental Examiners, in its Report of Findings and Recommendations to the Director of the Department of Registration and Education, found Petitioner guilty of unprofessional conduct in *all three areas* and not in the one area only as mentioned by Petitioner (R. 326-339). The order of revocation of the Director of the Department of Registration and Education was based upon the Board's Report and Recommendations (R. 351). This order was affirmed by the Circuit Court of Cook County on administrative review (R. 448-9).

When the case was reviewed by the Illinois Appellate Court, it was held that in operating the Ashland Belmont Dental Laboratory, Petitioner violated the Illinois Dental Practice Act in at least two respects, practicing dentistry under a name other than his own and soliciting business through prohibited forms of advertising (Pet., p. 7a). These acts occurred in 1959 and 1960 (R. 164).

The Illinois Appellate Court found these grounds to be both adequate and valid for revocation of Petitioner's license and held it to be unnecessary to consider any of the other evidence (Pet., p. 7a).

Petitioner's association with the Clark Dental Laboratory during the years 1957-59 was also found by the State Board of Dental Examiners to be in violation of the Illinois Dental Act in several respects (R. 335-6).

Thus it is clear that the assumption made by Petitioner in his first question presented to this court, that revocation was "on the basis of matters which occurred from 20 to 25 years before", is not valid. The Department revoked the license on the basis of evidence covering *three* different periods of time and the Illinois Appellate Court affirmed solely on the basis of the most recent evidence, current at the time Petitioner testified on July 18, 1960 (R. 144).

Petitioner's Second Question.

The second question presented by Petitioner is whether due process under the Fourteenth Amendment has been accorded to a dentist when his dental license of 35 years is revoked upon a record containing matters which occurred from 20 to 25 years earlier. Basically, the only challenge to what we shall refer to as the "earlier evidence" is its *age*. To be sure, at page 7 of the Petition it is admitted by Petitioner that his conduct of the mail order denture business would be unlawful today, but he intimates that it was not as clear before as it is now and, besides, he states that *this court specifically passed upon Petitioner's conduct* and expressly found that Petitioner "did not believe, nor under our system of jurisprudence was he bound to believe, that a fraud order destroying his business was justified by the facts or by the law." (Citing *Commissioner of Internal Revenue* v. *Heininger*, 320 U. S. 467, 472 (1943)).

Also at page 4 of the Petition, it is stated that this court, in the same case, "was required to pass upon the nature of the Petitioner's mail order business from 1933 to 1938".

Of course, the above references to Petitioner's tax case are intended to imply that this court, at that time, held that Petitioner's mail order business was legitimate and not in violation of Illinois law. This court held no such thing and clearly said so. The case involved the question of whether litigation expenses of $36,600.00 paid by Petitioner were properly deductible as business expenses from his gross income from the mail order denture business which amounted to $287,000.00 for 1937 and $150,000.00 for 1938.

At no point in the opinion of this court is there any indication that the Illinois Dental Practice Act was under consideration or whether Petitioner had violated that statute. Holding that Heininger was not bound to believe in advance that he was guilty of fraud is far removed from a holding that Petitioner's business was not unlawful.

At page 470, this court stated:

> "Our inquiry therefore is limited to the narrow issue of whether these expenses are 'ordinary and necessary' within the meaning of Section 23 (a)". (Revenue Acts of 1936 and 1938).

This court further stated at page 472:

> "Surely the expenses were no less ordinary or necessary than expenses resulting from the defense of a damage suit based on malpractice, or fraud, or breach of fiduciary duty. Yet in these latter cases legal expenses have been held deductible without regard to the success of the defense."

The opinion of this court continues at page 474:

> "The language of Section 23 (a) contains no express reference to the lawful or unlawful character of the business expenses which are declared to be deductible.

> And the Brief of the Government in the instant case expressly disclaims any contention that the purpose of the tax laws is to penalize illegal business by taxing gross instead of net income."

This court further stated, at page 475:

> "We hold therefore that the Board of Tax Appeals was not required to regard the administrative finding of guilt under 39 USC Secs. 259 and 732, 9A FCA title 39, Secs. 259, 732, as a rigid criterion of the deductibility of Respondent's litigation expenses."

To further dissipate this mirage about whether Petitioner's mail order business was lawful or unlawful in 1938 and prior years, it is only necessary to turn to the Illinois Dental Practice Act for those years. In 1927, for example, that statute authorized the revocation of a dental license for trying to obtain dental practice by false or fraudulent advertising (Cahill Illinois Revised Statutes, 1927, Chapter 91, Paragraph 78).

By 1933, Section 18-b had been added to the Dental Practice Act. This section authorized the revocation of a dental license for advertising in any manner to deceive the public, for claiming superiority over other dental practitioners, for publishing reports of cases (testimonials), advertising fees charged or materials used, or the use of any media whatever calling attention of the public to any person practicing dentistry (Cahill Illinois Revised Statutes, 1933, Chapter 91, Paragraph 88 (2)). The evidence proved conclusively that Petitioner was guilty of violating all of these provisions. There can be no doubt about the unlawful character of Petitioner's mail order denture business at any time.

Next we turn to the myth about Petitioner abandoning the mail order denture business in 1938 and having his license restored by the Department of Registration and Education in June, 1938 (Pet., pp. 4, 7). There is no basis in

this record for such statement. Petitioner cites pages 138-42, 327, and 329 of the record. All three references are to *argument* of Petitioner's counsel and are not references to evidence.

The record actually shows that Petitioner had *not* terminated his mail order business in June, 1938. In fact, it was on June 6, 1938 that Petitioner obtained an injunction against enforcement of the Post Office Department fraud order against him, and this injunction was not dissolved until October 27, 1939 (Rel. Ex. 11; R. 415).

The Board of Dental Examiners found Petitioner owned and operated the mail order business from 1926 to 1939 (R. 330). Also in the opinion of this court, cited at page 4 of the Petition, (*Commissioner of Internal Revenue* v. *Heininger*, 320 U. S. 467, 64 S. Ct. 249), it is stated at page 472:

> "Therefore he (Petitioner) *did not voluntarily abandon the business* but defended it by all available legal means." (Emphasis ours.)

Another untenable argument by Petitioner is found on page 7 of the Petition, where it is stated that the Department of Registration and Education received this case in 1960 when it was discovered that Petitioner's dental office was at the same address as a dental laboratory, a situation held to be proper and lawful by the Illinois Supreme Court, citing two cases, (*Menning* v. *Department of Registration*, 14Ill. 2d 553, 153 N. E. 2d 52 (1958); *Bruce* v. *Department of Registration*, 26 Ill. 2d 612, 187 N. E. 2d 711 (1963)).

Examination of these two cases will show that whether a dentist has his office at the same address as a dental laboratory is not the crucial question at all. The important issue is whether the dentist has associated himself professionally with a dental laboratory which is operating in violation of

the Dental Practice Act. In those two cases the court held the evidence of violations to be insufficient.

Petitioner next states that the *only reason* which can possibly explain the revocation here is that Petitioner's license was revoked because of his 1933-1938 activities in the mail order business.

Of course, the Illinois Appellate Court did not agree with this argument and considered *only* the later evidence, having to do with Ashland Belmont Dental Laboratory, where Petitioner was found to have been in violation (Pet., p. 7a).

Petitioner refers to the earlier evidence as an "avalanche of prejudicial and inflammatory material" (Pet., p. 8). That it was adverse to Petitioner there can be no doubt, but this can hardly make it prejudicial and inflammatory in the sense that it would be inadmissible. Petitioner says this earlier evidence was not "then before the court" (Pet., p. 9). An examination of the complaint before the Illinois State Board of Dental Examiners shows clearly that the earlier activities of Petitioner were included and were in issue (R. 43-65).

Petitioner then states that the Department of Registration and Education had actually passed upon these very charges and had restored Petitioner's license in June, 1938 (Pet., p. 9). The citations given in support of this statement comprise no evidence whatever—only argument of Petitioner's counsel. As a matter of fact, the evidence in question had not been previously considered by the Department in a hearing, and, as pointed out earlier in this Brief, there was no restoration of Petitioner's license.

Petitioner argues that the hearing was unfair, that the evidence as to the mail order business was prejudicial and inflammatory but at no place does he face up to the question

of whether or not the earlier evidence was actually inadmissible. He injects an argument of former adjudication but he failed to assert a formal plea of res adjudicata at any time.

Petitioner argues that the earlier evidence is too old, but he does not assert a defense of laches or plead a Statute of Limitations. Doubtless the reason such defenses are not formally pleaded is that they are actually not available to Petitioner since they do not apply to a sovereign state in proceedings brought in the name of the people to revoke a license previously issued by that state.

It has been held that lapse of time will not bar proceedings to revoke a license to practice law and we suggest that the same reasoning applies to the professions involving the healing arts, since similar questions of public interest are involved.

In the case of *In Re Anderson*, 370 Ill. 515, 520, the court stated:

> "The contention that lapse of time may be urged against disbarment proceedings is not well taken. We will not refuse to hear charges against an attorney because of the expiration of some period of time unless it would be unjust or unfair to compel him to answer such charges (*People* v. *Sherwin*, 364 Ill. 350; *People* v. *Hooper*, 218 Ill. 313)".

Since the earlier evidence here comprises documents, mostly advertising material, including photographs and facsimile signatures of Petitioner, easily recognizable by him, as his testimony revealed, there was no unfair advantage taken of him.

The revocation of a physician's license issued in 1927 was upheld by the Supreme Court of Wisconsin even though the proceedings were started as late as 1945 (*State of Wis-*

consin v. *Josefsberg*, 275 Wis. 142, 81 N. W. 2d 735, 63 A L R 2d 1071 (1957). Additional cases involving lapse of time in the matter of revocation of licenses of professional persons are set forth in the annotation at 63 A L R 2d 1080.

CONCLUSION

The first question raised by Petitioner assumes that Petitioner's license was revoked on a basis of matters occurring 20 or 25 years before, whereas the record clearly shows that the revocation order was based upon evidence relating to three different periods of activity, two of which were from 1957 to 1960, including the very year and month of the hearings. The order of revocation of the Illinois Department of Registration and Education was first reviewed by the Circuit Court of Cook County and affirmed. It was then argued orally and through printed briefs in the Illinois Appellate Court. That court held the evidence of violations of the Illinois Dental Practice Act for the years 1959 and 1960 was sufficient to justify revocation of Petitioner's license and that it was not necessary to consider the earlier evidence. The Supreme Court of Illinois denied a petition for leave to appeal to that court.

We respectfully suggest that this case has been thoroughly and carefully considered by the Illinois Department of Registration and Education and the respective courts of Illinois. The Petitioner has had extensive and fair hearings from the very beginning. The Petition For Writ Of Certiorari should be denied.

We have been requested by counsel for Relator, Edgar T. Stephens, to state that Relator, as Respondent to the Peti-

tion, joins in this Answer to the Petition for Writ of Certiorari.

Respectfully submitted,

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